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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Compatibility Between Cable Systems and Consumer Electronics Equipment

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ET Docket No. 93-7

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SUMMARY

The Commission must allow cable operators to recover the costs of the component terminals to be utilized with the Decoder Interface pursuant to the Commission's rate regulations as customer premises equipment. Requiring the costs for the component terminals to be included in the monthly regulated service rate for all subscribers rather than as a separately unbundled equipment charge will force subscribers who continue to use their current television sets with set-top terminals to pay not only for their own equipment but also to subsidize the component equipment provided to those subscribers purchasing new television sets equipped with the Decoder Interface.

The component terminals provided by cable operators for use with the Decoder Interface should not be restricted to only descrambling functions. Other program access and support functions which are currently offered in set-top terminals should also be available in component terminals. A restriction on the capabilities and features contained in the equipment provided by cable operators without a similar restriction on the features built into consumer electronics equipment will stifle rather than foster competition. Such a policy would also serve to increase costs to the consumer due to the need for additional hardware to provide these necessary functions.

The Commission should reconsider its decision to prohibit cable operators from introducing new equipment that utilizes different infrared codes. The infrared code alteration ban will effectively lock cable operators into their existing equipment supplier and prevent cable systems from taking advantage of improvements and cost savings offered by competing manufacturers to the ultimate detriment of consumers.

The Commission must ensure that the Decoder Interface standard incorporates a full set of command codes. Doing so will enable cable operators and others to offer the same non-security related program access and support functions that consumer electronics manufacturers incorporate into their products and will allow subscribers with cable ready equipment to receive digital television without the need for a set-top converter.

Finally, consumer education requirements must also apply to manufacturers and retailers of consumer electronics equipment. The need for equipment compatibility information is most critical at the point of sale so that the consumer can make an informed purchase decision. The cooperation of both industries is required to ensure the implementation of an effective consumer education program.

ARGUMENT

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, hereby submits its Reply to certain Comments and Oppositions to Petitions for Reconsideration with respect to the Commission's First Report and Order adopted in the above-captioned proceeding.¹ Time Warner is majority owned by Time Warner Inc., a publicly traded company, and consists principally of three divisions: 1) Time Warner Cable, which operates cable systems; 2) Home Box Office, which wholly owns two premium television services (the HBO service and Cinemax) and is 50% owner of one non-premium service (Comedy Central); and 3) Warner Bros., which produces and distributes motion pictures and television programs. Time Warner previously submitted comments and reply comments in response to both the original Notice of Inquiry and the more recent Notice of Proposed Rulemaking in ET Docket No. 93-7. Time Warner has filed its own Petition requesting that the Commission reconsider certain aspects of its First Report and Order adopted in this proceeding with respect to Section 76.630(c) of the Commission's rules, which prohibits cable operators from altering the infrared codes used to operate the remote control capability of customer premises equipment. Additionally, Time Warner filed an Opposition to certain aspects of the Petition for Reconsideration and Clarification filed by the EIA/CEG. Accordingly, Time Warner has actively participated in these proceedings from their inception.

In this Reply, Time Warner asks the Commission to determine that cable operators should be able to recover the costs of the component terminals to be utilized with the decoder interface as customer premises equipment pursuant to the Commission's rate regulations. Time

¹First Report and Order in ET Docket 93-7, 9 Rcd 1981 (1994). Time Warner files this reply in response to the following four pleadings filed on July 28, 1994: Opposition and Comments of the Consumer Electronics Retailers Coalition ("Coalition"); Opposition of the Consumer Federation of America ("CFA") and the Home Recording Rights Coalition ("HRRRC"); Comments on Reconsideration of the Compaq Computer Corporation ("Compaq"); and Opposition and Comments of the Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG").

Warner also respectfully requests the Commission to rule that these component terminals should not be limited to descrambling functions but can be capable of providing program access and support functions, such as on screen displays and forced tuning, which are currently provided in set top terminals. In addition, Time Warner submits cable operators should not be prevented from deploying equipment using different infrared codes than the equipment currently utilized. Time Warner also asks the Commission to ensure that the forthcoming Decoder Interface standard contains a full set of command codes, thereby enabling parties to offer non-security functions on a competitive basis as well as permitting digital transmission without the use of set-top converter boxes. Finally, Time Warner urges the Commission to establish a comprehensive consumer education program requiring both cable operators and manufacturers of consumer electronics equipment to inform customers of compatibility concerns.

I. COMPONENT TERMINALS SHOULD BE TREATED AS CUSTOMER PREMISES EQUIPMENT PURSUANT TO THE COMMISSION'S RATE REGULATIONS

Compaq maintains in its Comments on Reconsideration that under the Commission's plan, the Decoder Module used to provide security functions is to be provided to subscribers by cable systems at "no extra charge."² Although the Commission proposed in its Notice of Proposed Rulemaking to require cable operators to provide component descramblers to subscribers without a separate equipment or installation charge, in its First Report and Order the Commission expressly postponed consideration of this issue pending completion of an acceptable updated Decoder Interface standard.³

²Compaq Comments on Reconsideration at p. 2.

³In its First Report and Order, the Commission stated:

[W]e will establish a Decoder Interface standard and address all aspects of rules regarding its use, including consideration of whether we should not allow cable operators
(continued...)

Initially, it should be noted that the Commission's NPRM does not suggest that the cost of component terminals would be unrecoverable, but only that these costs would be recovered in the monthly service charge rather than as a separate unbundled equipment charge.⁴ As noted in Time Warner's Comments dated January 25, 1994, requiring the costs for the component terminals to be included in the monthly regulated service rate for all subscribers will force subscribers who continue to utilize their existing television sets with set-top terminals to receive regulated services to pay not only for their own equipment (in the form of an unbundled equipment lease rate) but also for the component equipment provided to those subscribers purchasing new television sets equipped with the Decoder Interface (in the form of higher monthly service rates).⁵ Ironically, many subscribers who cannot afford to upgrade their consumer electronics equipment will be forced, under the Commission's proposal, to pay the equipment costs of those who do purchase new consumer electronics products. Accordingly, Time Warner again asks the Commission to permit cable operators to classify and recover, as customer premises equipment, the cost of component terminals.

³(...continued)

to charge separately for component descramblers/decoders and require them to provide service in a format that is compatible with these devices, pending completion of an acceptable updated standard.

Id. at ¶ 40.

⁴NPRM at n.27. Although suggesting that the cost of component equipment can be recovered in the monthly service rates, the Commission has offered no concrete suggestions as to how such rate adjustments may be effectuated. Until a methodology is presented which will allow cable operators to recover their actual cost for the installation and lease of that equipment as mandated by §623(b)(3) of the 1992 Cable Act, 47 U.S.C. §543(b)(3), the Commission has failed to justify any departure from its established regulations.

⁵Time Warner Comments at p.15.

II. THE COMPONENT TERMINALS PROVIDED BY CABLE OPERATORS SHOULD NOT BE RESTRICTED TO ONLY SIGNAL SECURITY FUNCTIONS

EIA/CEG argues that paragraph 42 of the First Report and Order should be interpreted to mean that cable operators are required to provide component terminals that only perform security functions.⁶ Compaq similarly maintains that a cable system be required to provide a decoder module that performs only security-related functions, thereby preventing cable operators from bundling non-security features into the decoder module.⁷ Time Warner agrees that the Decoder Interface should be designed in a way that would permit competitively supplied equipment to provide functions other than signal security. However, Time Warner strongly opposes any requirement forcing cable operators to limit the usefulness of their terminals by requiring that such devices only perform signal security functions. To do so would directly contradict the Commission's objective of developing a competitive market for equipment used to receive cable service.

The First Report and Order does not suggest that cable operators be prohibited from providing components for use with the Decoder Interface that perform functions not related to signal security. The Commission's stated intention is to devise a Decoder Interface that will allow non-security functions to be provided through new products in the marketplace or to be incorporated into TV receivers and VCRs, which will in turn promote competition in the sale of equipment used to receive cable service.⁸ A prohibition on cable systems supplying component terminals with non-security features will actually have the effect of reducing competition, contrary to the Commission's stated objective, unless manufacturers of consumer electronics products are subject to a similar prohibition.

⁶EIA/CEG Opposition and Comments at p.4.

⁷Compaq Comments on Reconsideration at p.7-9.

⁸First Report and Order at ¶ 42.

Cable operators must be able to incorporate non-security related functions into their component terminals the same way consumer electronics manufacturers are allowed to integrate such functions into television receivers and VCRs. If security and non-security features can be integrated into the same terminal, this equipment can be offered to subscribers at reduced cost. Cable systems experience cost savings by integrating security and non-security functions because doing so saves the expense of utilizing separate microprocessors for descrambling and other program access/support functions. For example, the ability of the component terminal to extract data to receive text uses the same circuitry that governs access data. In a highly efficient manner, integrating security/program access functions with non-security functions takes advantage of excess memory that would otherwise go unused. Requiring cable operators to use a second microprocessor in a physically separate unit in order to offer such services as forced tuning and on-screen displays is patently wasteful, excessive, and costly, all of which are contrary to the overarching purposes of these proceedings.

In a larger sense, it is also important to acknowledge that special functions, such as forced tuning and on-screen displays, are integral to cable service. These security/program access services are not merely ancillary functions that cable systems provide to subscribers -- they are, in fact, as fundamental to cable service as the programming carried by cable systems. For example, the on-screen display is part of a cable operator's program access functions. The on-screen display allows a subscriber to choose what particular à la carte channels he or she would like to unscramble. Also, the on-screen display is central to the use of the parental lockout function. In addition, the on-screen display allows subscribers to configure characteristics of their component descramblers, such as the audio output source. To view these functions as simply tangential to the transmission of cable service ignores the reality that it is cable operators who have developed, introduced, and refined these new services and offerings in response to consumer needs. It would be inequitable for cable operators not to be allowed

to provide such services to subscribers in an attractive, cost-effective manner. Additionally, cable operators should be free to offer the same non-security functions in their component descramblers that manufacturers of consumer electronics equipment have begun to integrate into television sets. For example, cable operators should be permitted to offer electronic programming guides just as manufacturers of televisions do in their equipment. The flexibility that allows television manufacturers to integrate closed captioning decoders into their products should also apply to cable operators.

Time Warner also opposes Compaq's additional argument that the Commission could, as an alternative solution, allow cable operators to bundle security-related and non-security related functions into a single box provided that cable systems also make available an unbundled "security only" Decoder Module.⁹ The Coalition similarly argues that if cable operators are to offer non-access features, they must be supplied in hardware separate from the access module.¹⁰ Time Warner opposes such an approach and maintains that this would only increase expenses for both cable systems and consumers. As indicated above, a dual system of separate hardware will only increase costs due to the need for additional microprocessors. If cable operators must unbundle the non-security features from the Decoder Module and instead incorporate them in an additional piece of hardware, then manufacturers of consumer electronics must similarly be required to offer such services in hardware that is separate and distinct from their TVs and VCRs.

III. THE COMMISSION SHOULD NOT "FREEZE" THE INFRARED CODES CABLE OPERATORS USE TO OPERATE THE REMOTE CONTROL CAPABILITIES OF CUSTOMER PREMISES EQUIPMENT

Time Warner opposes the positions of EIA/CEG and the CFA/HRRC supporting restrictions on the ability of cable operators to change the infrared codes in equipment used to

⁹Compaq Comments on Reconsideration at p. 9.

¹⁰Coalition Comments and Opposition at p. 5.

operate the remote control capabilities of customer premises equipment.¹¹ In addition, Time Warner objects to EIA/CEG's statement that if the Commission is inclined to modify its infrared codes rules, it should prohibit cable operators from introducing new equipment that utilizes infrared codes for existing functions not in use on the date of the First Report and Order.¹²

A ban on the alteration of infrared codes would have serious anticompetitive effects by limiting the number of participants in the set-top box market. Freezing the infrared codes will only serve to perpetuate the market power of existing suppliers as well as discourage the delivery of advanced, state-of-the-art services. The prohibition perpetuates a monopoly by existing manufacturers because the infrared codes are typically the intellectual property of the set-top manufacturer. As a result, cable operators cannot utilize customer premises equipment which was manufactured by a company other than by the manufacturer who supplied the existing remote control.

The prohibition on changing infrared codes may force cable systems to deploy outmoded technology, thereby depriving subscribers of new services which depend on on-screen displays, such as multi-channel impulse pay-per-view, near video on demand and home transaction services. Cable operators must have the flexibility to provide set-top products with infrared codes that will support newly emerging services. Ironically, cable operators may be prevented from replacing set-top devices that may be better supported than the original models in terms of compatibility with commercially available remote controls.

On the other hand, a prohibition on the alteration of infrared codes, while theoretically attractive, would in fact provide few benefits to consumers. In most instances, remote control units purchased by subscribers will continue to work even if the existing customer premises

¹¹EIA/CEG Opposition and Comments at p. 5; CFA/HRRC Opposition at p. 6.

¹²EIA/CEG Opposition and Comments at p. 8.

equipment is replaced with equipment utilizing different infrared codes. If a remote control is programmable, a subscriber may use it with new equipment simply by programming the new infrared codes into the unit. In addition, remote control devices which are pre-programmed by the manufacturer are typically programmed to operate with most existing customer premises equipment.

If the Commission intends the infrared codes alteration ban to protect the consumer investment in remote control devices, then the prohibition should also apply to the manufacturers of consumer electronics equipment. Consumers replacing older televisions with new models may find it necessary to buy a new remote control device. Time Warner takes exception to the statement by HRRC and CFA that most of the set-top box manufacturers make little attempt to assert any right to prevent use of their infrared codes.¹³ Although set-top box manufacturers in some cases permit their codes to be manufactured in remote control units, set-top producers would vigorously protect against the improper use of their codes by competing set-top manufacturers.

Moreover, Time Warner objects to HRRC and CFA's wholly inaccurate assertion that if pre-programmed remote control units can accommodate several different series of infrared codes, "there is no reason why new set-top boxes cannot do likewise."¹⁴ This statement reveals fundamental misunderstandings regarding infrared code technology. Infrared receivers, such as those found in set-top terminals, are not suited to handle multiple modulation schemes with different frequencies and infrared codes. Infrared receivers are comprised of filtered hardware which only "listens" to exact frequencies and data structure. This is necessary so that different remote controlled products do not interfere with each other as well as for cost considerations.

¹³CFA/HRRC Opposition at p. 7.

¹⁴Id.

While the transmitter found in remote control units can easily and inexpensively adjust itself to different frequencies, the costs of adding more than one set of infrared codes to an infrared receiver are significantly higher. Furthermore, no added value is provided to the consumer in return for the higher cost while the potential for interference from multiple products is greatly increased.

In summary, Time Warner urges the Commission to reconsider its decision prohibiting cable operators from changing infrared codes. If the Commission does implement an infrared code alteration ban to protect consumer investment in remote control devices, common sense dictates that the ban should apply equally to manufacturers of consumer electronics equipment.

IV. THE COMMISSION SHOULD ENSURE THAT THE DECODER INTERFACE STANDARD INCORPORATES A FULL SET OF COMMAND CODES

Time Warner takes exception to the claim by the Consumer Electronics Retailers Coalition that until a national standard for digital transmission exists, set-top converter boxes will be necessary for digital cable transmissions, even with consumer electronics equipment that contains a Decoder Interface port and module.¹⁵ Time Warner maintains that if the forthcoming Decoder Interface standard is provided with a rich set of bidirectional command codes, add-on modules will support digital transmission, thereby eliminating the need for a set-top converter. Time Warner additionally notes that if the Decoder Interface standard does not adopt a rich set of command codes then third parties will not be able to offer non-security functions outside the television set. Accordingly, Time Warner urges the Commission to adopt a comprehensive set of command codes. Doing so will allow cable operators and others to offer the same non-security functions that consumer electronics manufacturers can build into their

¹⁵Coalition Opposition and Comments at p. 3, n. 4.

televisions and which are now found on set-top terminals and enable subscribers with cable ready equipment to receive digital television without the need for a set-top terminal.

V. CONSUMER EDUCATION REQUIREMENTS SHOULD ALSO APPLY TO MANUFACTURERS OF CONSUMER ELECTRONICS EQUIPMENT

Time Warner opposes EIA/CEG's argument that the Commission should keep the focus of consumer education efforts on the cable industry.¹⁶ This attempt to shrug off any responsibility for providing purchasers of consumer electronics equipment with the information they need to make an informed purchase decision ignores the fundamental fact that the most effective notification is made at the point of sale. It is when a new television or VCR is purchased that the need for compatibility information is most critical.

For example, the Commission should require manufacturers of consumer electronics equipment to affix a label on products advising consumers that some features may not be compatible with some of the services they may receive from cable operators. In a rulemaking whose goal is to ensure compatibility between cable systems and consumer TV receivers and VCRs, the lack of education requirements for one-half of this equation, the manufacturers of consumer electronics equipment, is conspicuous and irrational. To remedy this break in the flow of information, the Commission should require manufacturers of consumer electronics equipment to implement their own consumer electronics education programs. Only if both cable systems and manufacturers of consumer electronics equipment undertake such measures will the public be adequately informed about the compatibility of the products they purchase.

VI. CONCLUSION

Based on the foregoing, Time Warner respectfully requests the Commission to allow cable operators to recover the costs of component descramblers as customer premises equipment under the Commission's rate regulations. In addition, Time Warner respectfully requests that

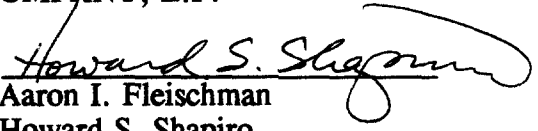
¹⁶EIA/CEG Opposition and Comments at p. 11.

the Commission determine that cable operators should not be required to provide component terminals which provide only descrambling functions. The Commission should also determine that cable operators may change the infrared codes on operator-provided set-top devices. Time Warner also respectfully asks the Commission to ensure that the Decoder Interface standard contains a full set of command codes which will allow third parties to offer non-security functions as well as permit digital transmission without the use of set-top converter boxes. Finally, Time Warner urges the Commission to create a comprehensive consumer education program which requires the participation of both cable operators and the manufacturers of consumer electronics equipment.

In considering the arguments raised by various parties in this proceeding, Time Warner urges the Commission to keep in mind that the purpose of this proceeding is not to dictate which industry should be allowed to offer which particular services, features or equipment to subscribers of cable television service but rather to ultimately provide consumers with the benefits of a coordinated effort to resolve the compatibility concerns enunciated by Congress, a goal which can be reached only through the participation and cooperation of both industries.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert S. Childress, a secretary at the law firm of Fleischman and Walsh, hereby certify that copies of the foregoing "Reply" were served this 8th day of August, 1994, via first-class mail, postage pre-paid, upon the following:

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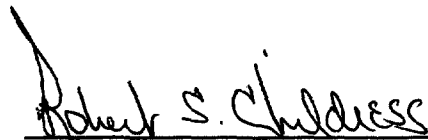
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